

REMARKS

In the Office Action, the Examiner rejected Claims 1-36. Applicant has carefully reviewed the Application in light of the Office Action and respectfully requests reconsideration and favorable action in this case.

Section 101 Rejections

The Examiner rejected Claims 19-27 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Applicant respectfully disagrees and contends that Claims 19-27 recite statutory subject matter.

The Examiner states in the Office Action, “[t]he claims recite of a ‘computer data signal embodied in a transmission medium’ which is software alone, and of itself, does not constitute statutory subject matter.” However, the Examiner has provided no authority or other support for the assertion that a “computer data signal embodied in a transmission medium” constitutes non-statutory subject matter. Furthermore, the Examiner’s assertion is not in accordance with the policy regarding signals as set forth in the Official Gazette which states,

from a technological standpoint, a signal encoded with functional descriptive material is similar to a computer-readable memory encoded with functional descriptive material, in that they both create a functional interrelationship with a computer. In other words, a computer is able to execute the encoded functions, regardless of whether the format is a disk or a signal.

See Official Gazette Notice of November 22, 2005, Annex IV(c).

Additionally, when an abstract idea is reduced to a practical application, the abstract idea no longer stands alone if the practical application of the abstract idea produces a useful, concrete, and tangible result. This then satisfies the requirements of 35 U.S.C. § 101. *See In re Alappat*, 33 F.3d 1526, 1544, 31 U.S.P.Q. 2d 1545, 1557 (Fed. Cir. 1994); *see also State Street Bank & Trust Co. v. Signature Financial Group, Inc.*, 149 F.3d 1368, 1373, 47 U.S.P.Q. 2d 1596, 1601-02 (Fed. Cir. 1998). Thus, producing a useful, concrete, and tangible result is the key to patentability according to *State Street* and other applicable case law. Claims 19-27 clearly recite a useful, concrete, and tangible result by disclosing, among other

things, “determining an operating system of the computer system” and “detecting the malicious code.”

Applicant contends that the above-quoted portion of the Official Gazette and the above-cited case law provide a proper foundation for Applicant’s claims and respectfully submits that Claims 19-27, which are directed to a “computer data signal embodied in a transmission medium and including computer executable instructions” for, among other things, “determining an operating system of the computer system” and “detecting the malicious code” are directed to patentable subject matter.

Section 112 Rejections

The Examiner rejected Claims 5, 6, 14, 15, 23, 24, 32 and 33 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. In particular, the Examiner argues that the term “substantially” is an unclear term that renders the rejected claims indefinite. *See* Office Action, page 3. Applicant respectfully disagrees.

Claim 5 recites “retrieving from a data file, information relating to the detected malicious code, including at least one command for restoring the computer system to a state that existed prior to modification by the malicious code and executing the at least one command for restoring the computer system to substantially a state that existed prior to modification by the malicious code.” Similar to Claim 5, Claims 6, 14, 15, 23, 24, 32, and 33 are generally directed to limitations similar to restoring a computer to substantially a state that existed prior to modification by the malicious code.

These limitations are not indefinite. The test for indefiniteness under Section 112, second paragraph, is whether “those skilled in the art would understand what is claimed when the claim is read in light of the specification.” M.P.E.P. § 2173.02 (citing *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1576 (Fed. Cir. 1986)). Applicant respectfully directs the Examiner’s attention to at least page 11, lines 1-14 of the Application which provide example descriptions corresponding to this claim. Furthermore, the M.P.E.P. clearly condones the use of the term “substantially” in claims. § 2173.05(b)(D) (citing *Andrew*

Corp. v. Gabriel Electronics, 847 F.2d 819, 6 U.S.P.Q.2d 2010 (Fed. Cir. 1988)). Accordingly, Applicant respectfully submits that the scope of Claims 5, 6, 14, 15, 23, 24, 32, and 33 is reasonably ascertainable by those skilled in the art and thus the claims are not indefinite; *see M.P.E.P. § 2173.05(e)* (citing *Ex parte Porter*, 25 USPQ2d 1144, 1145 (Bd. Pat. App. & Inter. 1992)). Consequently, Applications respectfully submit that Claims 5, 6, 14, 15, 23, 24, 32, and 33 comply with 35 U.S.C. § 112, second paragraph and request the Examiner to withdraw the rejections under 35 U.S.C. § 112, second paragraph.

Section 102 Rejections

Claims 1-36 are rejected by the Examiner under 35 U.S.C. 102(e) as being anticipated by *Togawa*, U.S. Patent 6,240,530. Applicant respectfully traverses these rejections for the reasons stated below.

Claim 1 is directed to a method for detecting and removing malicious code from a computer system. According to the method, an operating system of the computer system is determined. Based on the determined operating system, the computer system is scanned for malicious code. *Togawa* fails to disclose each of these limitations.

For example, Claim 1 discloses, “scanning the computer system for malicious code based on the determined operating system.” The Examiner contends that *Togawa* discloses these limitations and supports this rejection by pointing to sections of *Togawa* which recite, “identifying a type of the computer virus under operation environment of the operating system by the operating system fetching and starting up step” See Office Action, page 3 (citing *Togawa*, col. 4, lines 52-54). Applicant respectfully contends that the cited portions of *Togawa* do not support the Examiner’s rejection because, among other things, “identifying a type of the computer virus . . . by the operating system fetching and starting up step” does not disclose “scanning . . . based on the determined operating system” as required by Claim 1. Accordingly, Applicant contends that Claims 1 and all of its dependent claims are in condition for allowance.

Similar to Claim 1, Claims 10, 19, and 28 are generally directed to limitations similar to scanning a computer system for malicious code based on the determined operating system. For reasons similar to those discussed with respect to Claim 1, Applicant respectfully contends that the cited portions of *Togawa* do not support the Examiner's rejections of Claims 10, 19, and 28. Accordingly, Applicant respectfully contend that Claims 10, 19, 28, and all their respective dependent claims are in condition for allowance.

CONCLUSION

Applicant respectfully submits that this Application is in condition for allowance. For at least the foregoing reasons, Applicant respectfully requests full allowance of all pending claims. If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the undersigned attorney for Applicant stands ready to conduct such a conference at the convenience of the Examiner.

Applicant believes no fees are currently due. However, should there be a fee discrepancy, the Commissioner is hereby authorized to charge said fees or credit any overpayments to Deposit Account No. **02-0384 of BAKER BOTTS L.L.P.**

Respectfully submitted,

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